

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LYLE F. TRAXLER,

Plaintiff,

v.

Case No. 22-cv-0760-bhl

BRIAN SHERTZ, et al.,

Defendants.

DECISION AND ORDER

Plaintiff Lyle F. Traxler, who is representing himself, filed a complaint under 42 U.S.C. §1983. He is proceeding on Eighth Amendment claims based on allegations that Defendants were deliberately indifferent to his serious medical condition and associated pain. On October 3, 2022, the Court entered a scheduling order setting a discovery deadline of April 3, 2023. Motions for summary judgment on exhaustion grounds are due by December 2, 2022, and motions for summary judgment on the merits are due by May 3, 2023. Exhaustion is an affirmative defense and therefore need not be pled in the complaint; the defendant bears the burden of proving that the plaintiff failed to pursue the prison's grievance procedures. *Pavey v. Conley*, 663 F.3d 899, 903 (7th Cir. 2011); *see also Kincaid v. Sangamon County*, 435 Fed. App'x 533, 536 (7th Cir. 2011).

On November 23, 2022, Defendant Jodi Fryczynski filed a motion for summary judgment on the grounds that Traxler failed to exhaust the administrative remedies before he initiated this lawsuit. Dkt. No. 33. Unfortunately, Fryczynski's summary judgment materials do not comply with Civil L. R. 56(b)(1)(C). She fails entirely to include "a statement of proposed material facts as to which [she] contends there is no genuine issue and that entitle [her] to judgment as a matter

of law.” Accordingly, consistent with Civil L. R. 56(b)(1)(C)(iii), the Court will deny her motion without prejudice. Fryczynski may refile the motion, if she complies with the relevant local rules and does so by the December 2, 2022 deadline for filing summary judgment motions on exhaustion grounds. If she needs more time to bring her motion into compliance with the local rules, she may seek a reasonable extension of the deadline.

IT IS THEREFORE ORDERED that Fryczynski’s motion for summary judgment on exhaustion grounds (Dkt. No. 33) is **DENIED without prejudice**. Fryczynski may refile her motion in compliance with the local rules by **December 2, 2022**.

Dated at Milwaukee, Wisconsin on November 28, 2022.

s/ Brett H. Ludwig

BRETT H. LUDWIG

United States District Judge